

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

HENRIETTA WERTHY,

Case No. 3:10-cv-00324-HU

Plaintiff,

OPINION AND ORDER

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security

Defendant.

SIMON, District Judge.,

On September 2, 2011, Magistrate Judge Dennis J. Hubel issued findings and recommendations (#21) in the above-captioned case. Judge Hubel recommended that the Commissioner's decision be reversed and the case be remanded for further proceedings consistent with his findings and recommendations. Neither party has filed objections.

Under the Federal Magistrates Act, the court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." Federal Magistrates Act, 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a *de novo* determination of those portions of the report or specified

proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

If, however, no objections are filed, the Magistrates Act does not prescribe any standard of review. In such cases, “[t]here is no indication that Congress, in enacting [the Magistrates Act], intended to require a district judge to review a magistrate’s report[.]” *Thomas v. Arn*, 474 U.S. 140, 152 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.) (*en banc*), *cert. denied*, 540 U.S. 900 (2003) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”).

Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the court review the magistrate’s findings and recommendations for “clear error on the face of the record.”

No party having made objections, this court follows the recommendation of the Advisory Committee and reviews Magistrate Judge Hubel’s findings and recommendations (#21) for clear error on the face of the record. No such error is apparent. Therefore the court orders that Judge Hubel’s findings and recommendations (#21) is **ADOPTED**.

Dated this 30th day of September, 2011



Michael H. Simon
United States District Judge